Supreme Court, U.S.
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No. 03-632

In The

Supreme Court of the United States

JOSEPH W. DUBOIS, JR., and
SABINE G. DUBOIS,

Petitioners,

v.

WEST GATE VILLAGE ASSOCIATION,

Respondent.

On Petition For A Writ Of Certiorari
To The State Of New Hampshire Supreme Court

BRIEF IN OPPOSITION

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RULE 29.6 STATEMENT

The Respondent West Gate Village Association is a New Hampshire voluntary corporation organized in accordance with Chapter 292, New Hampshire Revised Statutes Annotated. It has no parent corporation. There is no publically held company that owns 10% or more of the Corporation's stock.

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BRIEF IN OPPOSITION

The Respondent, West Gate Village Association, ("West Gate") respectfully requests that the Court deny the petition for a writ of certiorari to the State of New Hampshire Supreme Court.

INTRODUCTION

The Petitioners' principal point of appeal is unclear. On page i of their Petition, the Petitioners assert that the NH trial court, a court of general jurisdiction, should not have heard a case against the Petitioners and assessed damages against them where the State statutes have not conferred subject matter jurisdiction upon the trial court. Specifically, under NH statutes, the NH court of general jurisdiction is the Superior Court which can only hear claims for monetary damages in excess of $1,500. For claims less then $1,500, exclusive jurisdiction is given to the district court, a lower court which operates with limited jurisdiction.

In contrast, page 3 of the Petition repeats the same grounds, but adds a second one. The second ground, shown on page 4 of the Petition, seems to state that the appellants were denied due process of law when the NH Supreme Court declined to hear their appeal on the issue involving the subject matter jurisdiction of the Superior Court.

COUNTERSTATEMENT

A. Factual Background

West Gate is an incorporated association of homeowners who share certain common facilities. Pursuant to their Declaration of Covenants, an annual assessment is levied against each of the homeowners. The Petitioners are one of 417 homeowners.

In late 1995, the Petitioners sued West Gate seeking several types of relief, among which was the removal of liens placed on their property for non-payment of the annual assessments. West Gate countersued saying that it was owed assessment amounts for the years 1990 through 1995, inclusive, and West Gate was further entitled to compensation for its attorney's fees under the terms of the Declaration.

Therefore, it is the Petitioners who chose to commence their proceeding in the Superior Court, and not West Gate.

The Petitioners' claims were dismissed within months. In the years that followed, West Gate's claims for the years 1990, 1991, and 1992, were dismissed by a statute of limitations defense. By the time that the Court made its final ruling on assessments on November 15, 2002, three separate suits were pending for nine years of unpaid assessments: Superior Court docket numbers 96-C-005/95-E-432 (1993-95), 99-C-194 (1996-98), and 02-C-009 (1999-2001). These cases and years were consolidated by Court orders on February 23, 2001 and June 7, 2002. The Petitioners had made two minor payments but still owed $2,601.55.

The genesis of the obligation from the Petitioners to West Gate is the Declaration of Covenants. It states that

the annual assessment binds the land and is a personal obligation of each owner. It also says that the judgment or decree in any action brought to collect the assessment shall include, without limitation, reimbursement for costs and attorney's fees, together with interest.

The Petitioners claim that the $1,500 limit, which may have prevented the Superior Court from hearing this case, should be applied because the annual assessments were less than $1,500 in each of the three separate suits. As the Petitioners have consistently done, they ignore three important facts which clearly disqualify them from using this defense: (1) when this defense was first raised by Motion dated June 30, 2002, the Petitioners already had a partial judgment against them exceeding $15,000 as of May 26, 1998, without yet adding the interest; (2) the claims for all years 1993 through 2001 had been consolidated by the Superior Court into one case as of February 23, 2001 and June 6, 2002; and, (3) West Gate's rights were not limited to individual annual assessments but also included interest and attorney's fees exceeding $29,770, of which the Petitioners received notice on June 4, 2002.

B. Procedural History

This case dragged through the court system for many years. The first civil suit was commenced in December 1995 seeking damages for assessments, interest, costs, and attorney's fees concerning the years 1990 through 1995. The second civil suit was brought in June 1999 seeking the same damages, but for the years 1996 through 1998. The third civil suit was brought in February 2002 for the same damages, but for the years 1999 through 2001.

While these matters were pending before the Superior Court, the Petitioners made three appeals to the NH Supreme Court, and a fourth one after the final judgment. The first NH Supreme Court appeal is dated January 24, 1996. It was fully briefed and argued. The second NH Supreme Court appeal is dated June 11, 1998. It was also fully briefed and argued. The third NH Supreme Court appeal is dated January 11, 2002. The Court declined to hear this appeal. The fourth NH Supreme Court appeal is dated December 23, 2002. The Court declined to hear this appeal by order dated June 10, 2003. As of the time of the fourth NH Supreme Court appeal, the Court had entered an order finding that the Petitioners owed $2,601.35 for the consolidated years 1993 through 2001, and legal fees plus costs equaling $37,848.48.

The Petitioners' last appeal to the NH Supreme Court was denied on June 10, 2003. The Petitioners' Motion for Reconsideration of June 20, 2003 was denied by the NH Supreme Court on July 25, 2003. This appeal followed.

In their "Statement of the Case", the Petitioners assert that the Superior Court never addressed the issue of lack of jurisdiction over subject matter. However, the court specifically ruled on the Petitioners' motion concerning subject matter jurisdiction in its Order of August 13, 2002. See, Petition, page A-6.

REASONS FOR DENYING THE WRIT

I. Rule 10: No Conflict Between Courts of Appeals

United States Supreme Court Rule 10 states that a Writ of Certiorari will be granted only for compelling

reasons. Among these is the entry by a United States Court of Appeals of a decision which is in conflict with another Court of Appeals. There is no such issue in this case.

II. Rule 10: No Decision by a State Court of Last Resort on a Federal Question

Under said Rule 10, there is no decision of a state court of last resort which decides a Federal question in a way which conflicts with the decision of another state court of last resort or a United States Court of Appeals.

III. Rule 10: No State Court Decision Involving an Important Question of Federal Law

Said Rule 10 requires that a state court has decided an important question of Federal law that has not been, but should be, settled by this Court, or has decided an important Federal Question in a way that conflicts with relevant decisions of this Court. No allegations are contained in this appeal which contain an important question of Federal law, or a decision which conflicts with relevant decisions of this Court.

IV. Rule 10: Appeal Based Upon Errors of Factual Findings and Misapplication of a Properly Stated Rule of Law

On page 3 of their Petition, the Petitioners complained that the Superior Court denied their Request for Findings and Rulings, and submits exhibits in support of this. The Petition also states that statutory provisions of NH R.S.A. 520-A:14 and R.S.A. 491:7 were misapplied. If true, Rule

10 states that a Petition for Writ of Certiorari is rarely granted on these grounds.

V. Lack of State Action

The Fourteenth Amendment of the United States Constitution restricts only governmental or state action. The only power of this Court over State judgments is to correct them to the extent that they incorrectly adjudge Federal rights. (*Herb v. Pitcairn,* 1945; 65 S.Ct. 459, 463; 324 U.S. 117, 125-126; 463, 89 L. Ed. 789). The longstanding practice of this Court has been that the State Courts speak with final authority on questions of State law. (*Mulaney v. Wilber*, 1975; 95 S.Ct. 1881, 1885-1886; 421 U.S. 684, 689; 44 L. Ed. 2d 508.

VI. Lack of Statutory Authority

28 U.S.C. § 1257 gives this Court the authority to review final judgment and decrees rendered by the highest court of any state. Those grounds include the validity of a treaty or statute of the United States, the validity of a statute of any state which is repugnant to the United States Constitution, treaty, or laws, or a title, right, privilege, or immunity that is specially set up under the Constitution. To the extent presented in the Petition, the Petitioners apparently claim that the NH Superior Court acted beyond the jurisdictional limits set by NH law. However, they offer no connection between the statutory authority of 28 U.S.C. § 1257 and the alleged harm.

VII. Lack of Legal Precedent

The Petitioners cite several cases by which they apparently try to establish a common law right of Federal due process under the Fourteenth Amendment. Several cases are listed.

The first cited case is *Stump v. Sparkman*, 435 U.S. 354, 98 S. Ct., 1099 (1978). *Stump* is an appeal of the decision by the Court of Appeals of the Seventh Circuit concerning judicial immunity. While there is a brief discussion of subject matter jurisdiction in the Order, this is basically a case about the absolute immunity of an Indiana Circuit Court Judge from liability for damages even where he apparently exceeded the jurisdiction of his court.

The second cited case is *Second National Bank of Tampa v. J. Bruce Blake, Trustee*, 600 F.2d 160 (8th Circuit, 1979). This case involves the sale of property by a bankruptcy trustee and finds that the Bankruptcy Court had subject matter jurisdiction to sell certain personal property of a debtor. It has no precedential value to the Petitioners on the theory that they advance in this Appeal.

The third cited case is *Close v. Fisette*, 146 N.H. 480, 766 A.2d 131 (2001). This is a NH Superior Court case involving the interpretation of terms in an easement agreement. Although subject matter jurisdiction is discussed, the Petitioners apparently raise it for the principles that any decision rendered by a court without subject matter jurisdiction is void and that this jurisdictional issue may be raised at any time during the proceeding, including appeal. However, there is nothing in this opinion to tie state subject matter jurisdiction to a Federal issue.

The fourth cited case is *In the Matter of Terrence K.*. a decision of the Family Court, City of NY, Queens County. *In the Matter of Terrence K.*, 138 Misc. 2d 611, 524 N.Y.S. 2d 966 (Fam. Ct. 1988). This is a case involving subject matter jurisdiction over foreign diplomatic personnel. Although subject matter jurisdiction is discussed, the case seems to be based upon principles of personal jurisdiction which require the dismissal of a petition against a person covered by diplomatic immunity. Again, there is no relationship between this case and a Federal right of due process.

The fifth case cited is *Bradley v. Fisher*, 13 Wall 335 (1871). This is another judicial immunity case from an order of the criminal court in the District of Columbia, apparently a predecessor to the U.S. District Court for the District of Columbia. Although this is a case from a Federal jurisdiction, this is an order which upholds judicial immunity where judicial acts are done in excess of their jurisdiction. This is not a case involving a clear absence of jurisdiction over the subject matter which is the issue raised by the Petitioners on appeal.

In contrast, the Petitioners ignore cases that show that the Federal right of due process only arises where there is a fundamental absence of any and all right of the State to take cognizance of the cause as a matter of State law. However, where the contentions are confined to jurisdiction in the sense of a duty to rightfully decide those subjects to which the judicial power of a State extends, there is no protection by the due process clause of the Fourteenth Amendment. Mere errors of law alleged to have been committed by a State court in the performance of its duties and within the scope of authority of the State

court are non-Federal. See, *McDonald v. Oregon Railroad and Navigation Company*, 233 U.S. 665 (1914).

CONCLUSION

For all the foregoing reasons, the Respondent West Gate respectfully requests that this Honorable Court deny this Petition.

Respectfully submitted,

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